IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5997 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GSRTC - Petitioner(s)

Versus

ABBAS ALI BAPUJI PATEL - Respondent(s)

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Appearance :

MR HS MUNSHAW for Petitioner No(s).: 1.

MR GK RATHOD for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 04/07/2005

ORAL JUDGMENT

1. This petition is directed against the judgment and award dated 30th January, 1999 passed by the Labour Court, Bharuch, in Reference [L.C.B.] No. 440 of 1994 whereby the Labour Court has directed the petitioner Corporation to

reinstate the respondent workman with continuity in service and without back wages.

2. The short facts of the case are that the respondent workman was working as conductor with the petitioner Corporation. On 29th October, 1992 while the respondent workman was on duty, the bus was checked by the checking squad of the petitioner Corporation and certain irregularities were found in the collection of fares and issuance of tickets. Therefore, charge sheet was issued and department inquiry was held against the respondent workman. Since the charges levelled against the respondent workman were proved, he was dismissed from the service w.e.f. 30th March, 1994.

2.1. Being aggrieved by the said order, the respondent workman raised an industrial dispute which was ultimately referred to the Labour Court for adjudication. The Labour Court after appreciating the materials produced before it, passed the impugned award. Hence, this petition.

3. Mr. Munshaw learned advocate for the petitioner Corporation has contended that the Labour Court has erred in appreciating the past record of the respondent workman. He has submitted that on earlier occasions, the respondent workman had committed defaults for which appropriate penalties were imposed and in spite of that the respondent workman had continued with his mis conduct. He has,

therefore, submitted that the Labour Court has erred in setting aside the order of dismissal passed by the petitioner Corporation.

4. I have heard the learned counsel for the respective parties. Having gone through the documents placed on record, it transpires that since the respondent workman has been reinstated in service after a period of six years, it would not be proper to disturb the said order at this stage. However, the respondent workman had committed several irregularities in the past also. Moreover, in the departmental inquiry held against the respondent workman the charges levelled against him were also proved. Looking to the past conduct of the respondent workman, the Labour Court has denied him the back wages. However in spite of being given several opportunities to improve his conduct, the respondent workman has not improved his behaviour. Thus, keeping in mind the past conduct of the respondent workman, the Labour Court has denied him back wages. In view of the peculiar facts and circumstances of the case, I am of the opinion that the award passed by the Labour Court is required to be modified.

5. In above view of the matter, the petition is partly allowed. The impugned award dated 30th January, 1999 passed by the Labour Court, Bharuch, in Reference [L.C.B.] No. 440 of 1994 is modified to the extent that the direction qua reinstatement with continuity in service is

confirmed and the directions qua denial of back wages is substituted by imposing a penalty of stoppage of two increments with future effect. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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